

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. **8:10ML2151 JVS (FMOx)** Date **September 13, 2010**

Title **IN RE: TOYOTA MOTOR CORP. UNINTENDED
ACCELERATION MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY LITIGATION**

Present: The James V. Selna
Honorable

Karla J. Tunis

Sharon Seffens

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Steven Berman Monica Kelly
Frank Pitre Mark Robinson, Jr.
William Cohan
Marc Seltzer (by phone)
Donald Slavik (by phone)
Elizabeth Cabraser (by phone)

Cari Dawson
Lisa Gilford
Amber Wessels

- Proceedings:**
- 1. Melanie Berlieb, & Elvira Gesell's Request to Substituted Attorney William Cohan in place of Monica R. Kelly (Fld 8-2-10)**
 - 2. Court's Order to Show Cause Why Jimenez' Master Consolidated Complaint on Behalf of All Foreign Plaintiff's should not be stricken (MO 8-3-10)**
 - 3. Plaintiffs Melanie Berlieb, Elvira Gesell and Punitive Class of German Plaintiffs' Motion for Leave to File Amended Complaint for Plaintiffs Melanie Berlieb, Elvira Gesell and the Class of German Plaintiffs Without Compliance with Court Order No. 4 (Fld 8-3-10)**
 - 4. Plaintiff Laura Centeno Jimenez' Motion for Leave to File Foreign Plaintiffs' Master Consolidated Complaint withouth compliance with Court Order No 4 (fld 8-9-10)**
 - 5. Plaintiffs Melanie Berlieb, Elvira Gesell and Punitive Class of German Plaintiffs' Motion for Leave to File "Proposed Motion to Strike Toyota's Opp to Foreign Plaintiffs' Motions for Leave to File Complaints Notwithstanding Order No. 4" (Fld 8-30-10)**

Cause called and counsel make their appearances. The Court's tentative ruling is issued. Counsel make their arguments regarding the above listed motions. The Court grants the defendants a one day extension to September 14, 2010 to file any motions to dismiss. Counsel to meet and confer within 7 days regarding briefing of the filing of an Amended Complaint. The Court rules GRANTS motions number 1, 3, and 4; discharges the order to show cause in number 2; and GRANTS motion number 5 for leave to file the motion to strike and

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DENIES the motion to strike. The Court rules on these motions in accordance with the Tentative Ruling as follows:

The Court has before it a number of matters dealing with foreign plaintiffs:¹

- The Court's August 3, 2010 Order to Show Cause why the Master Consolidated Complaint on Behalf of Foreign Plaintiffs filed by Laura Centeno Jimenez *et al.* (collectively "Centeno Jimenez") ("Centeno Jimenez Complaint") (Docket No. 266) should not be stricken. (Docket No. 269.)
- The subsequent Motion of Centeno Jimenez for Leave to File Foreign Master Consolidated Complaint. (Docket No. 270.)
- The Motion of Melanie Berlieb *et al.* (collectively "Berlieb") to file an amended complaint for Berlieb and a class of German plaintiffs ("Berlieb Complaint"). (Docket No. 265.)
- The request of attorney William A. Cohan to substitute as counsel for Melanie Berlieb and Elvira Gesell. (Docket No. 262.)
- Berlieb's Motion to Strike Toyota's Opposition to Foreign Plaintiffs' Motions for Leave to File Complaints Notwithstanding Order No. 4. (Docket No. 303.)

The Court makes two observations at the outset. First, the foreign plaintiffs ought to have an opportunity to participate in pretrial activities, including responding to law and motions practice on the sufficiency of the foreign claims. Having declined to put forward the claims of any foreign plaintiffs in their Master Consolidated Complaints, it is insufficient for Plaintiffs' Lead Counsel Committee for Economic Loss Class Actions to merely state they decline to consent to the advancement of those claims. (Statement of

¹For purposes of this Order, a "foreign plaintiff" is a non-United States domiciled individual or entity who purchased a vehicle outside the United States.

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Co-Lead Counsel for Economic Loss Plaintiffs Regarding Motion for Leave to File Amended Complaint for Plaintiffs Melanie Berlieb, etc., p. 1, Docket No. 284; Statement of Co-Lead Counsel for Economic Loss Plaintiffs Regarding the Court's Order to Show Cause Why the Master Consolidated Complaint on Behalf of Foreign Plaintiffs Should Not Be Stricken, p. 2, Docket No. 283.) The foreign plaintiffs are in these proceedings, and there is no basis to leave them on the sidelines until the multidistrict aspects of these pretrial proceedings have concluded. The Court simply disagrees that the foreign plaintiffs would not be prejudiced if the Court declined to entertain the foreign plaintiffs at this stage. (Toyota Opposition, p. 1, Docket No. 285.)

Second, there is a flaw in Order No. 4 dealing with filing procedures. Having made lead and liaison counsel gatekeepers for all filings by requiring specified signatures, the Court did not contemplate the situation where lead or liaison counsel would withhold the required signature, whether for valid or less than valid reasons. The Court will shortly issue an amended Order to address this issue.

I. The Centeno Jimenez Complaint.

The Court discharges the Order to Show Cause and grants leave to file the Centeno Jimenez Complaint. The Court agrees that the initial filing was not authorized, but Centeno Jimenez followed up reasonably promptly with a motion for leave.

In their opposition, the Toyota defendants point to a number of procedural and substantive flaws in the complaint. (Toyota Opposition, *passim*.) Even if there is some validity to Toyota's assertion that the pleading is "defective and meritless" (*id.*, p. 1), such challenges are better addressed as part of full-blown motions practice rather than in summary fashion.

The Court appoints Attorney Monica R. Kelly as lead counsel for the foreign economic loss class plaintiffs only. The Court has previously recognized her expertise in appointing her as consultant to the Liaison Committee for Personal Injury/Wrongful Death Cases and the Lead Counsel Committee for Economic Loss Class Actions on foreign law issues, including motions practice involving foreign law issues. The Court notes that none of her clients asserts any personal injury or wrongful death claims in the

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Centeno Jimenez Complaint. She is directed to file an amended complaint within thirty days asserting only the economic loss claims; she may make additional amendments responsive to the Toyota defendants' attack on the pleading.

Except for motions practice detailed below, the Court stays the action. The foreign plaintiffs, just like every other plaintiff in these proceedings, will have the benefit of the work undertaken by the Core Discovery Committee.

Within in the seven days of the filing of the amended Centeno Jimenez Complaint, the parties shall meet and confer and submit a stipulation concerning a briefing schedule for motions on the pleadings and a hearing date.

The Toyota defendants may file a motion seeking relief on any foreign law issues, including, without limitation, *forum non conveniens*; the extraterritorial scope of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* ("RICO"); the extraterritorial scope of California's Unfair Competition Law, Cal. Bus. & Prof. Code, § 17200, California's Unfair Advertising Law, Cal. Bus. & Prof. Code, § 17500 and California's Consumer Legal Remedies Act, Cal. Civ. Code, § 1750; and failure to join other defendants, including foreign defendants. Because no RICO claim is pled in either the Economic Loss Master Consolidated Complaint or the First Amended Consolidated Complaint, the Toyota defendants may also file a motion challenging any other aspect of the legal sufficiency of the RICO claim.

II. The Berlieb Complaint.

The Court grants the request of attorney William A. Cohan to substitute as counsel for Melanie Berlieb and Elvira Gesell.

The Court grants leave to file the Berlieb Complaint, but stays the action in view of the appointment of attorney Kelly as lead counsel for the foreign economic loss plaintiffs. The Toyota defendants need not reply to the Berlieb complaint unless ordered to do so by the Court.

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The Court grants Berlieb leave to file her proposed motion to strike Toyota's opposition. The Court appreciates the procedural dilemma which Berlieb raises, and will be responding with its amendment to Order No. 4. However, the Motion itself is denied.

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